

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 16**

**ADT, LLC**

**and**

**COMMUNICATIONS WORKERS OF  
AMERICA AFL-CIO**

**Cases: 16-CA-144548**

**16-CA-168863**

**16-CA-172713**

**16-CA-179506**

**16-CA-180805**

**16-CA-181198**

**16-CA-187497**

**16-CA-191963**

**16-CA-199947**

**16-CA-200961**

**16-CA-209070**

**16-CA-209995**

**ADT, LLC’S MOTION FOR BILL OF PARTICULARS**

Respondent, ADT, LLC (“ADT” or the “Company”), by its undersigned counsel and pursuant to Section 102.26 of the Rules and Regulations of the National Labor Relations Board (“NLRB” or the “Board”) and Section 10291.1 of the Board’s Case Handling Manual – Part 1, moves for a Bill of Particulars as to the allegations set forth in Paragraphs 17 through 21, and 34 of the Order Further Consolidating Cases, Sixth Consolidated Complaint and Notice of Hearing (the “Sixth Consolidated Complaint”) filed in the above captioned matter. For the reasons set forth below, ADT’s Motion should be granted. Counsel for the General Counsel should be required to immediately amend the Complaint to amend all paragraphs that allege unfair labor practices based on the withdrawal of recognition and the Company’s decision to not put new hires into the collective bargaining unit.

**I. PROCEDURAL HISTORY**

On or about February 23, 2018, the Regional Director filed the Sixth Consolidated Complaint. The Sixth Consolidated Complaint was served on ADT on February 26, 2018. The Sixth Consolidated Complaint stated that a hearing would occur on the allegations on March 20,

2018, at 9:00 a.m. at the NLRB Hearing Room at the Fritz G. Lanham Federal Building, 819 Taylor St. Room 8A24, Fort Worth, Texas 76102. The Company urges the Board to carefully review the facts below, before the Company, and the tax payers, waste thousands of dollars on a two to three week hearing on issues that are confusing to understand without further explanation. It is abundantly clear to ADT that the allegations at issue must be clarified before the hearing can occur.

## **II. APPLICABLE LAW**

To satisfy due process, the General Counsel is obligated “to clearly define the issues and advise an employer charged with a violation... of the specific complaint he must meet ... [and failure to do so] is ... to deny procedural due process of the law.” *Soule Glass Co. v. NLRB*, 652 F.2d 1055, 1074 (1st Cir. 1981); *see also SFTC, LLC d/b/a Santa Fe Tortilla Co.*, 360 NLRB No. 130 at 2 n. 9, 10 n. 6 (June 13, 2014) (affirming the administrative law judge’s decision to dismiss allegations due to due process grounds, in which the administrative law judge explained “[Respondent] is entitled to due process. That is, it is entitled to know ahead of time what alleged violations it must defend. It is, after all, a simple matter to prepare or amend a complaint that does so.”).

The Administrative Procedure Act, the Board’s Rules and Regulations, and the Board’s Case Handling Manual – Part 1, demand that the complaint notify the Respondent of the facts and law at issue so Respondent has a full and fair opportunity to prepare a defense. *See* Administrative Procedure Act, 5 U.S.C. § 554(b)(3) (“persons entitled to notice of an agency hearing shall be timely informed of... the matters of fact and law asserted”); NLRB Rules and Regulations, Section 102.15 (“the complaint shall contain... a clear and concise description of the acts which are claims to constitute unfair labor practices, including, where known, the approximate dates and places of such acts and the names of respondent’s agents or other representatives by whom committed”);

NLRB Case Handling Manual – Part 1 § 10268.1 (the complaint “sets forth... the facts relating to the alleged violations by the respondent(s)”). Similarly, § 10268.1 of the Board’s Case Handling Manual – Part 1 requires that the allegations of the complaint be “sufficiently detailed to enable the parties to understand the offenses charge and the issues to be met.”

The Board’s Case Handling Manual § 10292.1 provides that where there has not been strict adherence to the particularity in pleading requirements of § 10264.2, it is appropriate for the respondent to file a bill of particulars. Several of the allegations of this Sixth Consolidated Complaint fail to provide such particulars. As a result, ADT is unable to prepare to defend itself. Therefore, the Company moves for a bill of particulars that will provide ADT with clarity as to meet the requirements of the Board’s Rules and Regulations, Case Handling Manual and relevant law. If relief is not granted and ADT is prosecuted under these circumstances, it will be denied due process.

### **III. PARTICULARS REQUESTED**

Pertinent to this Motion, the Sixth Consolidated Complaint states:

- ¶ 17(a) – “Since September 1, 2014, Respondent refused to apply the parties’ collective bargaining agreement to new hires and refused to recognize the Union as representatives of new hires.”
- ¶ 17(b) – “On or about May 31, 2017, Respondent, by Nixdorf, withdrew its recognition of the Union as exclusive collective-bargaining representative of the Unit.”
- ¶ 21 – Respondent has “been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative and in good faith with the exclusive bargaining representative of its employees.”

The Union represented a unit of “all servicemen in Dallas and Fort Worth, Texas” from 1978, up until the withdrawal of recognition on May 31, 2017. *ADT, LLC*, 365 NLRB No. 77, 1 (May 17, 2017). In 2010, ADT acquired Broadview, another security system provider, and took

over three of Broadview's Texas locations. *Id.* In 2014, ADT closed all of the Broadview and ADT locations at issue, and 70 former Broadview, non-union, employees merged with 58 unit employees. *Id.* at 1-2. On March 3, 2014, ADT filed a RM petition, seeking an election of all "install and service technicians at ADT's Carrollton, Tyler, Trinity, and Haltom facilities in the Dallas/Fort Worth area."<sup>1</sup> *Id.* at 2. ADT asserted doubt as to the Union's majority status, and the Regional Director agreed with ADT and found that a unit of "[a]ll installation and service technicians employed by the Employer in the Dallas/Fort Worth area at its Carrollton, Haltom City, Trinity, and Tyler facilities' [was] an appropriate unit." *Id.* The vote was conducted, and the ballots were sealed, but never counted. *Id.* Instead, the NLRB reversed the Regional Director's decision, holding that: (1) the Union did not make a claim for recognition, and (2) ADT failed to show a reasonable good faith uncertainty that objectively and reliably indicated employee opposition to the Union. *Id.* at 3.

As noted, however, by both the Board's majority opinion and former Chairman Miscimarra in his dissent, the Union demanded a private non-Board election among the former Broadview employees, and demanded that ADT include new hires into the collective bargaining unit. *Id.* at pp. 4, n. 12; 7. In addition, the numbers of employees, alone, were clear that the Union did not have majority support of all the merged employees. It appears to be unclear as to what the Employer must do when it has knowledge, based on numbers alone, that the Union no longer has majority support of the employees.

On May 31, 2017, after receiving notice of the Board's decision in *ADT, LLC*, 365 NLRB No. 77, the Company unilaterally withdrew recognition from the Union because ADT knew the

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<sup>1</sup> ADT filed the RM petition instead of lawfully withdrawing recognition because the Board has requested employer to test a union's majority support rather than unilaterally withdrawing recognition. *Id.* at 6 (citing *Levitz Furniture Co.*, 333 NLRB 717, 717 (2001)).

Union had lost majority support.<sup>2</sup> As clear evidence, only 33 of the 154 employees are part of the collective bargaining unit.

It is clear that there is only one valid unit – that is, all installation and service technicians employed by the Employer in the Dallas/Fort Worth area at its Carrollton, Haltom City, Trinity, and Tyler facilities. Based on the logic of the Union, the unit would include those who were formerly part of the collective bargaining unit, not the former Broadview non-union employees, but would then include any new hires since the merger of Broadview and ADT; even though all of these employees share like practices, benefits, pay, locations, supervision and a community of interest. This position makes no practical sense. As acknowledged in *ADT, LLC*, 365 NLRB No. 77, and by the Union, if an election was to occur today, with these employees, the only appropriate unit would be all service and installation technicians employed by the Employer in the Dallas/Fort Worth area at its Carrollton, Haltom City, Trinity, and Tyler facilities. To exclude the former Broadview non-union technicians now, would thus be a violation of employees Section 7 rights.

In light of the foregoing, ADT requests the following particulars:

1. The specific reason why newly hired employees, as in those who share nearly identical work practices, benefits, pay, and the like, with the former Broadview non-union employees, must be included in a collective bargaining unit that does not include the former Broadview non-union employees. More specifically, provide the justification for the bargaining unit sought by the Union, including grandfathered union employees and new hires, but excluding former Broadview non-union employees – who do the exact same job as grandfathered union employees and new hires – because the Union is using this claim as a means to maintain a majority status.
2. The specific reason why the former Broadview employees, as in those who share nearly identical work practices, benefits, pay, and the like, with the Union's collective bargaining unit employees, should be excluded from the appropriate unit.

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<sup>2</sup> It is also imperative to note that a decertification petition was filed in May 2015, Case No. 16-RD-152333. The petition has been blocked, but remains open. It is unclear to the Company how its employees can be clearer that they wish to no longer be represented by the Union, or that the Union no longer has majority support.

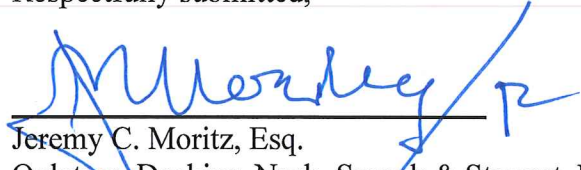
3. The specific conduct, actions, or statements that would contradict the validity of ADT's decision to withdraw its recognition of the Union.
4. The specific conduct, actions, or statements that would show that the employees in the collective bargaining-unit are sufficiently distinct from the former Broadview employees.
5. The specific legal and factual basis upon which the Board alleges that ADT's decision to withdraw recognition, that is, recognition from a union that had only minority and not majority support in the only appropriate unit, violated the NLRA.

#### **IV. CONCLUSION**

For the reasons set forth above, ADT's Bill of Particulars should be granted before the Complaint goes before a two to three week trial on the issues as addressed above so that ADT can properly prepare to defend itself.

Dated this 13th day of March 2018.

Respectfully submitted,



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**Attorneys for ADT, LLC**

**CERTIFICATE OF SERVICE**

I, Meredith Smith, do hereby certify that the foregoing Motion for Bill of Particulars was served on the following parties on the 13th day of March 2018:

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Administrative Law Judge  
National Labor Relations Board  
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